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February 11, 2014

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To: Supervisor Don Knabe, Chairman
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From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE

Executive Summary

This memorandum contains reports on the following:

- **Prison Population Reduction Plan.** On February 10, 2014, the Federal three-judge panel overseeing the prison overcrowding litigation against the State granted a request to extend the deadline for the State to meet the court-ordered population cap by two years to February 28, 2016.
- **Status of County-Sponsored Legislation**
 - **SB 955 (Mitchell)** – related to adding human trafficking to the list of offenses for which a wiretap may be ordered, was introduced on February 6, 2014.
- **Status of Legislation of County Interest**
 - **AB 471 (Atkins)** - related to Infrastructure Financing Districts and redevelopment successor agencies, passed the Assembly Floor in concurrence of Senate amendments on February 10, 2014.

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Prison Population Reduction Plan

On February 10, 2014, the Federal three-judge panel overseeing the prison overcrowding litigation against the State granted a request to extend the deadline within which the State must meet the court-ordered population cap. The court order extends by two years, to February 28, 2016, the date by which the State must reduce the prison population to 137.5 percent of design capacity or approximately 110,000 inmates. The court order acknowledges that in order to meet the prison population reduction goals, the State will need to contract for additional capacity in county jails, community correctional facilities and private prisons. Additional elements of the three-judge panel's order include:

- Requires the State to meet interim population reduction benchmarks by June 30, 2014 and February 28, 2015;
- Prohibits the State from increasing the population of inmates housed in out-of-State correctional facilities beyond the current level of 8,900 inmates;
- Requires the State to continue implementation of previously proposed measures including:
 - Increased credit earning for non-violent, second strike inmates who will be able to earn 33.3 percent good-time credits as well as milestone credits for completing rehabilitation programs while incarcerated.
 - Development and implementation of new parole determination process for non-violent, second strike inmates who have served at least 50 percent of their sentence.
 - Expansion of medical parole to cover larger numbers of inmates with severe physical or cognitive conditions.
 - Implementation of elderly parole whereby inmates 60 years or older who have served at least 25 years of their sentence can be considered for parole.
 - Implementation of expanded alternative custody programs for female inmates;
- Requires the State to provide monthly reports to the court on the status of the population reduction measures;

- Appoints a compliance officer who can order the early release of lower-risk inmates to meet any missed population benchmark;
- Retains the compliance officer until the State has met the final population benchmark and it is firmly established that compliance with the final benchmark is durable.

The court order assumes the State will seek no further appeals or requests for extensions and reaffirms the expectation that the State fulfill its commitment to develop comprehensive and long-term population reduction reforms, which could include the establishment of a sentencing commission or other recidivism reduction measures. A copy of the court order is attached.

Status of County-Sponsored Legislation

SB 955 (Mitchell), which as introduced on February 6, 2014, would add human trafficking to the list of offenses for which interception of electronic communications (wiretaps) may be ordered. This measure is currently in the Senate pending referral to committee.

Legislation of County Interest

AB 471 (Atkins), which as amended on January 29, 2014, would allow an Infrastructure Financing District to include portions of former redevelopment project areas and make several changes to the laws governing the dissolution of redevelopment agencies, passed the Assembly Floor in concurrence of Senate amendments by a vote of 73 to 0 on February 10, 2014. This measure now proceeds to the Governor.

We will continue to keep you advised.

WTF:RA
MR:IGEA:lm

Attachment

c: All Department Heads
Legislative Strategist
Local 721
Coalition of County Unions
California Contract Cities Association
Independent Cities Association
League of California Cities

IN THE UNITED STATES DISTRICT COURTS
FOR THE EASTERN DISTRICT OF CALIFORNIA
AND THE NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al.,

Plaintiffs,

v.

EDMUND G. BROWN JR., et al.,

Defendants.

NO. 2:90-cv-0520 LKK DAD (PC)

THREE-JUDGE COURT

MARCIANO PLATA, et al.,

Plaintiffs,

v.

EDMUND G. BROWN JR., et al.,

Defendants.

NO. C01-1351 TEH

THREE-JUDGE COURT

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' REQUEST FOR
EXTENSION OF DECEMBER 31,
2013 DEADLINE**

WHEREAS the Court has read and considered the parties' filings in response to this Court's January 13, 2014 Order;

WHEREAS defendants have represented that, in conformance with the terms of this order, they will develop comprehensive and sustainable prison population-reduction reforms and will consider the establishment of a commission to recommend reforms of state penal and sentencing laws;

1 WHEREAS defendants have represented that they will not appeal or support an
2 appeal of this order, any subsequent order necessary to implement this order, or any order
3 issued by the Compliance Officer to be appointed in conformance herewith that is consistent
4 with the duties of the Compliance Officer as specified in this order, and will not move or
5 support a motion to terminate the relief contained in this order until at least two years after
6 the date of this order and such time as it is firmly established that compliance with the
7 137.5% design capacity benchmark is durable;

8 WHEREAS this order is issued in reliance on defendants' representations; and

9 WHEREAS the Court finds that the order below is narrowly tailored to the
10 constitutional violations identified by the *Plata* and *Coleman* courts, extends no further than
11 necessary to remedy those violations, and is the least intrusive possible remedy.

12 IT IS HEREBY ORDERED that:

13 1. The Court GRANTS defendants' request for an extension of time, but only to
14 February 28, 2016, to comply with this Court's June 30, 2011 Order to reduce California's
15 prison population to 137.5% design capacity.

16 2. The deadline to achieve the ordered reduction in the in-state adult institution
17 population to 137.5% design capacity is extended to **February 28, 2016**. Defendants will
18 meet the following interim and final population reduction benchmarks:

19 (a) 143% of design bed capacity by **June 30, 2014**;

20 (b) 141.5% of design bed capacity by **February 28, 2015**; and

21 (c) 137.5% of design bed capacity by **February 28, 2016**.

22 3. During the extension period, and as long as this Court maintains jurisdiction,
23 defendants shall not increase the current population level of approximately 8,900 inmates
24 housed in out-of-state facilities. Defendants shall also explore ways to attempt to reduce the
25 number of inmates housed in out-of-state facilities to the extent feasible.

26 4. The Court acknowledges that defendants intend to comply with this order in
27 part through a combination of contracting for additional in-state capacity in county jails,
28 community correctional facilities, and a private prison, and through newly enacted programs

1 including the development of additional measures regarding reforms to state penal and
2 sentencing laws designed to reduce the prison population. Defendants shall also immediately
3 implement the following measures:

4 (a) Increase credits prospectively for non-violent second-strike offenders
5 and minimum custody inmates. Non-violent second-strikers will be eligible to earn good
6 time credits at 33.3% and will be eligible to earn milestone credits for completing
7 rehabilitative programs. Minimum custody inmates will be eligible to earn 2-for-1 good time
8 credits to the extent such credits do not deplete participation in fire camps where inmates also
9 earn 2-for-1 good time credits;

10 (b) Create and implement a new parole determination process through
11 which non-violent second-strikers will be eligible for parole consideration by the Board of
12 Parole Hearings once they have served 50% of their sentence;

13 (c) Parole certain inmates serving indeterminate sentences who have
14 already been granted parole by the Board of Parole Hearings but have future parole dates;

15 (d) In consultation with the Receiver's office, finalize and implement an
16 expanded parole process for medically incapacitated inmates;

17 (e) Finalize and implement a new parole process whereby inmates who are
18 60 years of age or older and have served a minimum of twenty-five years of their sentence
19 will be referred to the Board of Parole Hearings to determine suitability for parole;

20 (f) Activate new reentry hubs at a total of 13 designated prisons to be
21 operational within one year from the date of this order;

22 (g) Pursue expansion of pilot reentry programs with additional counties and
23 local communities; and

24 (h) Implement an expanded alternative custody program for female inmates.

25 5. Defendants will report to this Court monthly on the status of measures being
26 taken to reduce the prison population, and on the current in-state and out-of-state adult prison
27 populations. The first report shall be submitted on the 15th of the month following the date
28 of this order and shall continue until further order of the Court.

1 6. The Court will appoint a Compliance Officer for the purpose of bringing
2 defendants into compliance with any missed benchmark by ordering inmate releases. If
3 compliance with any benchmark is not achieved within a 30-day period following the
4 expiration of any missed benchmark, the Compliance Officer shall, within seven days, direct
5 the release of the number of inmates necessary to achieve compliance with the missed
6 benchmark and the measures to be followed in selecting the prisoners to be released. The
7 authority of the Compliance Officer shall extend no further than ordering defendants to
8 release inmates necessary to ensure defendants' compliance with any missed benchmark.

9 (a) In selecting inmates for release, the Compliance Officer shall consider
10 public safety by minimizing any risk of violent re-offense. The Compliance Officer shall not
11 be authorized to order the release of condemned inmates or inmates serving a term of life
12 without the possibility of parole.

13 (b) The Compliance Officer shall have access to all necessary CDCR data
14 and personnel regarding the California prison population, including population projections,
15 risk assessments, recidivism data, statistical data, and prisoner files, and shall receive
16 administrative support from CDCR to the extent needed to carry out the Compliance
17 Officer's duties. In addition, the Compliance Officer may engage the services of a part-time
18 assistant and/or a part-time secretary upon a showing of good cause within the discretion of
19 this Court at a rate of pay to be approved by this Court should the parties disagree. If the
20 Compliance Officer finds good cause to question the accuracy of any data presented to him
21 or her, the Compliance Officer shall have the authority to verify the accuracy of such data.

22 (c) The Compliance Officer shall be compensated for all work or services
23 necessary to ensure compliance with a benchmark, should a benchmark be missed, and all
24 work or services necessary to verify the accuracy of any data presented to him or her by the
25 CDCR, should the Compliance Officer find good cause to question the accuracy of such data.
26 Defendants shall reasonably compensate the Compliance Officer on an hourly basis and for
27 reasonable expenses, and the provisions of 18 U.S.C. § 3626(f) shall not apply.
28

1 7. The Compliance Officer shall retain all powers, access to information, and
2 compensation granted under this order after the final 137.5% benchmark is reached and until
3 it is firmly established that defendants' compliance with the 137.5% benchmark is durable.
4 During this period after compliance with the final benchmark and before such compliance is
5 durable, if two of defendants' monthly reports, consecutive, report a prison population above
6 137.5% design capacity, the Compliance Officer shall, within seven days, direct the release
7 of the number of inmates necessary to bring the prison population to 137.5% design capacity.

8 8. The parties shall meet and confer to attempt to make a joint recommendation to
9 the Court regarding the selection of the Compliance Officer and an appropriate hourly rate of
10 compensation, which may be subject to increase annually. If the parties are not able to agree,
11 they may each recommend up to two candidates for the Court's consideration and a proposed
12 hourly rate. The parties shall file their recommendations, including a description of any
13 recommended candidate's qualifications and an explanation of any proposed hourly rate,
14 within 30 days of the date of this order. The selection of the Compliance Officer and
15 compensation rate rests solely within the Court's discretion, and the Court will not be limited
16 to the parties' recommendations, whether separate or joint.

17 9. To the extent that any state statutory, constitutional, or regulatory provisions,
18 except the California Public Resources Code, impede the implementation of this order or
19 defendants' ability to achieve the population reduction benchmarks, all such laws and
20 regulations are waived. Although the Court does not issue a general waiver of the Public
21 Resources Code, defendants may request waivers, as the need arises, of these statutory
22 provisions that are tailored to specific projects.


23 10. This Court shall maintain jurisdiction over this matter for as long as is
24 necessary to ensure that defendants' compliance with the 137.5% final benchmark is durable,
25 and such durability is firmly established.

26 11. Defendants shall, within 60 days of the date of this order, file with the
27 Compliance Officer under seal, the categories of prisoners who are least likely to reoffend or
28 who might otherwise be candidates for early release (the "Low Risk List") that this Court

1 previously ordered them to create. The Low Risk List shall not be viewed by the
2 Compliance Officer unless and until he or she is ordered to do so by this Court. Similarly,
3 this Court will not inspect the list unless circumstances so warrant. Defendants shall file an
4 amended list every 60 days, should changes to the list become appropriate.

5
6 **IT IS SO ORDERED.**


7
8 Dated: 02/10/14


STEPHEN REINHARDT
UNITED STATES CIRCUIT JUDGE
NINTH CIRCUIT COURT OF APPEALS

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10
11
12 Dated: 02/10/14


LAWRENCE K. KARLTON
SENIOR UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF CALIFORNIA

13
14
15
16 Dated: 02/10/14


THELTON E. HENDERSON
SENIOR UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA